Jurisdictional Statement

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81-166

IN THE
SUPREME COURT OF THE UNITED STATES

JUNE TERM, 1981

NO._____

BENJAMIN A. RASKY,

Plaintiff-Appellant,

-vs-

DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS and JOAN G. ANDERSON, Director,

Defendants-Appellees.

ON APPEAL FROM THE ILLINOIS APPELLATE COURT, FIRST JUDICIAL DISTRICT-FIFTH DIVISION

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether Sec. 115(e) (11) and (21) of Chap. 114½ of Real Estate Brokers and Salesmen's Act of Ill., referring to Revocation or Suspension of License (Sec. 11) for "having demonstrated unworthiness or incompetency to act as real estate broker or salesman in such manner as to safeguard the interest of the public", (appendix I) (the Act now Sec. 5732 of Chap. 111, Professions and Occupations), and Sec. 104.02 (a) thereof, defining Brokers to also include Principals (now Sec. 5706 of Chap. 111) and Rule XI (Property Management) of Rules and Regulations of the Department of Registration and Education are unconstitutional and void, being in violation of the 14th Amendment, Sec. 1 of the U.S. Constitution, referring to Due Process and Equal

Protection of the Laws.

2. Whether, in the light of question 1, the terms "unworthiness" and "incompetency" (Sec. 11 of Act) on the part of a broker or salesman all involve real estate transactions, and not only an alleged charge of violations of ordinances in buildings owned by Plaintiff herein as a principal, the Plaintiff contending that the provisions of the Act do not apply to him, since he did not act at any time as a broker but as an owner of his own property, and no transactions were involved.

3. Whether the refusal to grant Plaintiff a continuance on June 14, 1977, after he requested same by phone and, as directed by Department Counsel, by letter dated June 8, 1977 to the Department, expecting to receive the new continued date

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upon his arrival thereat, the Department stated hearing was ended, denied receipt of letter and persisted therein until November 9, 1979, so that revocation was Ex Parte, whether that amounted to a denial of Due Process and Equal Protection of the Laws.

4. Whether Department's prejudice and bias against Plaintiff, set forth in Statement of the Case by reason of great hostility, to include not having given any notice to him of any complaints against him as to the operation of his real estate before filing its Complaint to revoke his license, the extensive media publicity against him, in the press, radio and TV, referring to him as a slum operator, in which it participated, stating Plaintiff has the option of appealing any decision, even before the return date of the proceedings, thus show-

ing that it had prejudged him as guilty, and without giving him an opportunity to show that all three witnesses at the Ex Parte hearing had committed perjury and that its counsel had uttered inflammatory and false argument against him bringing about the revocation, all amounted to a denial to the Plaintiff of Due Process and Equal Protection of the Laws.

5. Whether Due Process and Equal Protection of the Laws was denied Plaintiff when the Department in its Complaint (Appendix F) alleged housing violations in Plaintiff's four buildings, which preceded the effective date of the Act of December 15, 1974, and failed to allege, as provided in Department Rule XI, "wherein the premises were known by registrant to be in violation of the ordinances", failed to make such a

finding of fact, first making such finding in its Conclusions of Law and recommendation for revocation of his license.

6. Whether Department, by reason of its bias and prejudice against Plaintiff as set forth in Statement of the Case, in exacting the extreme penalty of revocation of his real estate broker's license, violated Plaintiff's rights and privileges under Amendment VIII of the United States Constitution against the infliction of "cruel and unusual punishments".

PARTIES

All parties to this proceeding are set forth in the caption.

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IN THE SUPREME COURT OF THE UNITED STATES -

JUNE TERM 1981

No.

BENJAMIN A. RASKY,

Plaintiff-Appellant,

-vs-

DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS and JOAN G. ANDERSON, Director,

Defendants-Appellees.

ON APPEAL FROM THE ILLINOIS APPELLATE COURT, FIRST JUDICIAL DISTRICT-FIFTH DIVISION

The opinion of the Illinois Appellate Court, Fifth Division of the First Judicial District of Illinois is reported in 87 Ill. App. 3d 580 (1980). A copy of the Opinion is attached hereto as Appendix A. Copies of the Order of the Appellate Court deny-

ing Plaintiff's Petition for Rehearing, and of the Supreme Court of Illinois denying Petition for Leave to Appeal are attached hereto as Appendices B and C respectively.

STATEMENT OF JURISDICTION

Plaintiff-Appellant appeals to the Supreme Court of the United States from the decision of the Appellate Court of Illinois of June 27, 1980, which affirmed the decision of the Circuit Court of Cook County, Illinois which on August 9, 1978 affirmed the decision of the Director of the Department of Registration and Education of Illinois, hereinafter referred to as the Department, that revoked Plaintiff's real estate broker's license, Ex Parte, on October 21, 1977 and on November 30, 1978 denied Plaintiff's Motion to

vacate said Order. The Court entered an Order on November 20, 1980 denying Plaintiff's Petition for Rehearing (Appendix C). The Supreme Court of Illinois denied Plaintiff's Petition for Leave to Appeal on March 30, 1981 (Appendix D). Notice of Appeal to the United States Supreme Court was filed on May 27, 1981 in the Illinois Appellate Court, First District - Fifth Division (Appendix E).

The jurisdiction of this Court is invoked under Chap. 28 U.S.C. §1257(2). Cases sustaining the jurisdiction of this Court to review the judgment herein are: Interstate Circuit v. Dallas, 390 U.S. 676, 678 (1968); Bantam Books v. Sullivan, 372 U.S. 58, 61 (1963); Cohen v. California, 403 U.S. 15, 17-18 (1971).

STATUTE AND RULE OF DEPARTMENT INVOLVED

Illinois Revised Statutes, 1973, Chapter 114½ of Real Estate Brokers and Salesmen's Act, Section 115(e) (11) and (21), referring to Revocation or Suspension of License (Sec. 11) for "having demonstrated unworthiness or incompetency to act as real estate broker or salesman in such manner as to safeguard the interest of the public" (SEE APPENDIX 1) (the Act is now Sec. 5732 of Chap. 111, Professions and Occupations).

Sec. (21) is incidental to Plaintiff's claim of the unconstitutionality of Sec. 115(e) (11) (SEE APPENDIX I).

Department Rule XI (Property Management) which attempts to define "unworthiness or incompetence", adopted December 15, 1974, the effective date of the foregoing statutes. (SEE APPENDIX I).

Illinois Revised Statutes, Section 104.02 (a), defining Brokers to also include Principals (now Sec. 5706 of Chap. 111 (SEE APPENDIX I).

STATEMENT OF THE CASE

This is the second Complaint filed by

Plaintiff-Appellant concerning Complaint filed by the Department (Defendant- Appellees) for the revocation of his real estate broker's license. The first one was for a Declaratory Judgment to declare unconstitutional and void Section 115(e) (11) and (21) of Chapter 114½, Real Estate Brokers and Salesmen Act (now Sec. 5732 of Chap. 111, Professions and Occupations) referring to Revocation or Suspension of License (Sec. 11) for "having demonstrated unworthiness or incompetency to act as real estate broker or salesman in such manner as to safeguard the interest of the public,"

also, Section 104.02(a) of the Act (now Sec. 5706 of Chap. 111), defining "Brokers" to also include Principals, and Department Rule XI (Property Management) which attempts to define "unworthiness or incompetence" (SEE APPENDIX I). The Trial Court

held against Plaintiff on ground that he had not exhausted his administrative remedies. The second one was for Administrative Review following revocation of his license on October 21, 1977 Ex Parte. In both cases the decisions were for the Defendants and affirmed on Appeal. The Decision in the first Appeal #77-1932, reported as 62 Ill. App. 3d 633 (1978), is set forth in APPENDIX B. The Decision in this Appeal #79-334, reported as 87 Ill. App. 3d 580 (1980) is in APPENDIX A.

As set forth in Plaintiff's Complaint (R. 2), he is an attorney at law and that has been his sole vocation since his admission to the Bar of Illinois in 1929. He obtained a real estate broker's license #075-039-524 on March 24, 1950. He has never used it, never engaged in the

brokerage business, never received a brokerage commission, does not have an office, and has never engaged in the business of buying and selling real estate. He has owned and operated his own real estate as an investment only, and all acts performed by him were incidental thereto.

Without any prior communication to him the Department filed a Complaint against him (APPENDIX F) returnable February 22, 1977, which he received on January 25, the Complaint charging him with alleged housing violations in four buildings owned and operated by him, seeking to revoke or suspend his license therefor. In alleged violations respectively on June 15, 1973 at 5621-5 Winthrop (Plaintiff only owning 5623-25 Winthrop and not 5621); August 17, 1973 at 832 Gunnison; April 29, 1974 at

-5726 Winthrop; November 15, 1974 at 1064-68 Berwyn at Winthrop (5301-9), and which conditions continued for some time. Those alleged dates preceded the effective date of the amended statute: to wit, December 15, 1974. That, with the failure of the Department to allege knowledge by him, the registrant, that the premises were in violation of the ordinances as set forth in Department Rule XI, were reasons for Plaintiff's contention of Want of Jurisdiction and failure to state a cause of action.

Before the return date of the proceedings the Department issued press releases, appeared on radio or TV broadcasts, issued statements to include one from the Director Anderson, who stated , "the action could have a significant effect on the management of slum buildings throughout the state," a

factual release by its chief attorney (not true), and from another stating, "Rasky has the option of appealing any decision."

For several years before the proceedings Plaintiff encountered great difficulties operating the buildings in a declining neighborhood, suffering vandalism, fires, building invasions by squatters (these being furnished apartment elevator buildings), with hardly any income (finally none) to meet expenses. There were assaults on Plaintiff, employees and old time tenants -- driving them away. By reason thereof, Berwyn-Winthrop was let go in mortgage foreclosure. Plaintiff deposited $16,500 (not $16,000 as cited in Court's Decision, APPENDIX A page 583 ln. 23) in Court in 1975 to rehabilitate 5726 Winthrop which had been greatly wrecked in 1973-4 by vandals. More money was added to approximate

-$25,000 and Plaintiff engaged contractors to do the work. It was not done by the Receiver as Court stated in its Opinion, APPENDIX A (87 Ill. App. 3d580, pg. 583, ln. 21):

> ". . . that these violations were not corrected until a Receiver was appointed in 1975 and plaintiff was directed by the court to deposit $16,000 for repairs of that building; that the violations at the building could have been repaired rather quickly; and that the receiver achieved 90% compliance with the building code. . "

The receiver was discharged on September 11, 1975 without doing anything for there was no income (R. 49). He served from Aug. 1, 1975.

On compliance, the housing court case was dismissed on September 23, 1976. One month later the building was wrecked again.

Plaintiff collapsed and underwent open heart surgery Thanksgiving, 1976. On his release from the hospital, he disposed of

of the two remaining buildings on Winthrop on January 18, 1977 at a sacrificial loss of $253,000, not being able to carry on any further. The deed was issued to buyers on March 3, 1977. The three buildings on Winthrop had been disposed of before any notice was given him of the proceedings. The fourth one on Gunnison, a six-flat (and not a six-story building erroneously designated in the Appellate Court Decision, APPENDIX A, pg. 583 ln. 6) has since been sold in March 1978.

In the brief space allowed, Plaintiff, disputing the allegations in the Court Decision of housing violations, is answering to show error in the Court Findings which might be considered serious, that the Court may not take silence to mean admission thereof. When Plaintiff stated that he,

and not the Receiver, brought 5726 Winthrop into compliance, he meant every condition, including the Court finding "that the violations included general exterior neglect, a chimney in a dangerous condition, . . ." (Pg. 583, ln. 16 APPENDIX A). He engaged tuckpointers who did all the exterior work needed; also a welder who removed the chimney completely and hooked up the breaching from the boiler to the brick incinerator chimney, and received Court approval. (R.48)

On page 582, line 24 of Decision, referring to 5621-25 Winthrop, "that an inspection in June 1976 revealed . . . the fracture of an exterior wall," Plaintiff had the entire front of the building and parts of the sides tuckpointed in 1975 (R. 44). At a housing court hearing on May 13, 1976 another inspector testified

that he was satisfied that the work had been done (Plff. Br. 19 App. Court). This was shortly before the Department hearing. The Findings of Fact refer to the plural and not singular as testified, and to a different building, 5301-9 Winthrop (R.14) as "defective exterior walls", and not "fracture of an exterior wall."

In Court Decision (pg. 582, line 33) referring to Berwyn-Winthrop building:

> ". . . his inspection revealed code violations. . .a defective boiler, and a rusted out steel fire escape that during the course of inspections from 1973 to approximately 1976, the building was never brought into compliance."

The boiler was not defective; it was in a very deep basement that suffered from water seepage from the lake and was corrected by installing three sump pumps, by Court approval, and constant servicing. The fire

escape was rusted in two small spots and was repaired by a welder in 1975. Plaintiff lost the building through appointment of a receiver on August 1, 1975 and mortgage foreclosure. It wasn't his in 1976.

Pg. 583, ln. 5 is a reference to 832 Gunnison, the Decision stating:

> "The third inspection of witness was on June 9,1976, of an occupied six-story apartment building at 832 Gunnison . . . , that he found 21 code violations which included broken plaster, peeling paint, garbage, mice and roaches, and defective plumbing."

That constituted the inspector's sole testimony (R. 324) following the Question: "Did you find any building violations on that date?" (R. 323 ln. 23) That building is not a six-story, but a six-flat, 3 - 5 and 3 - 4 room apartments, serviced by a union janitor, resident agent, and contractual scavenger and exterminating services.

Each of the Winthrop buildings were serviced by resident managers, janitors and carpenters, with contractual scavenger and exterminating services. Since the disposal of the 2 remaining buildings on Winthrop, both under new ownership have suffered massive fires and other damages so that they have been closed down and have continued to be so for several years to the present time.

On the return date, February 22, 1977, of the Revocation Proceedings, the hearing was continued to April 26, 1977. On April 25th Plaintiff filed a Motion to Dismiss the Department Complaint on the ground of unconstitutionality of the amended statutes and Rule XI, as well as other grounds (R.31 -38), together with Discovery requested, to include names of persons who submitted complaints against Plaintiff; also all infor-

mation as to participation by Department employees and agents in media publicity (R.370). The hearing was then continued to June 14, 1977. On Department's filing an Answer (R. 39-41) in which it admitted in paragraphs 5 and 6 that the constitutionality of the Statutes and Rule can only be decided by a court, Plaintiff thereupon filed a Complaint for Declaratory Judgment. That Complaint was dismissed as previously noted on ground that Plaintiff had not exhausted his administrative remedies, and affirmed on Appeal (APPENDIX B).

Shortly before the hearing on the Department Complaint, on June 14, 1977, Plaintiff had not as yet recovered from the effects of the open-heart surgery and had to be re-hospitalized. He requested a continuance by phone, but was directed to

submit his request in writing, which he did on June 8, 1977 (R.24) and expected to be advised of the continued date. Arriving at the Department just before 12:15 p.m. on June 14th (R.12), he was informed that the proceedings had ended but fifteen minutes earlier. He was denied a continuance or an immediate hearing, although the Committee and Counsel were still present. They also denied receiving the letter requesting the continuance. He has since been refused a hearing so that the revocation of his license was entered Ex Parte on Oct. 21, 1977.

Throughout the proceedings before the Department, the entire Declaratory Judgment proceedings (1st case) at the trial and appellate levels, and the current case for Administrative Review throughout the trial and appellate levels, until filing their Brief in the 2nd Appeal on November 9,1979

when they first admitted its receipt, claiming it came on June 15, 1977, a day after the hearing, through all this the Deferdants persisted in denying receipt of this letter. Such knowledge may well have caused the trial Judge Dunne to determine the case in Plaintiff's favor at a hearing on August 9, 1978 when he affirmed the Department's Order of Revocation and dismissed Plaintiff's Complaint for Administrative Review. Following argument after Plaintiff contended that he had requested a continuance and had sent the letter of June 8, 1977, following the phone call, the receipt of which was denied by Defendants, the Judge stated:

> "...All right. So the record is clear. I found no such letter requesting a hearing beyond the date which was set for hearing." (Sup. R. 23, ln. 10)
>
> ...(R. 46, Ln. 17)
> "THE COURT: So, you saw fit not to avail yourself of your rights to ap-

pear before them. That is your privilege, Mr. Rasky.

MR. RASKY: But I did ask for a postponement, nonetheless.

THE COURT: Mr. Rasky, there's nothing in this record which indicates that you asked for a postponement on that day. . . ."

During all this argument, Defendants' Counsel maintained a silence without disclosing the receipt of the letter. The Judge may well have decided in Plaintiff's favor on the disclosure of such information.

Plaintiff thereupon appealed the Decision of the Circuit Court of Cook County affirming the Decision of the Department which revoked his real estate broker's license. The Appellate Court of Illinois affirmed the Decision of the Circuit Court. Petition for Leave to Appeal to the Supreme Court of Illinois was denied, whereupon this Appeal to the Supreme Court of the United States is taken.

SUMMARY OF ARGUMENT

The Court erred in its Decision affirming the Order of Revocation of Plaintiff's real estate broker's license by the Department. Plaintiff contends:

1. Sec. 115(e) (11) and (21) of Chap. 114½ of Real Estate Brokers and Salesmen's Act of Illinois, referring to Revocation or Suspension of License (Sec. 11) for

> "having demonstrated unworthiness or incompetency to act as real estate broker or salesman in such manner as to safeguard the interest of the public," (APPENDIX I)

(the Act now Sec. 5732 of Chap. 111, Professions and Occupations);

And Sec. 104.02(a) thereof, defining Brokers to also include Principals (now Sec. 5706 of Chap. 111) under title of "BROKER" (APPENDIX I);

And Rule XI (Property Management) of

Rules and Regulations of the Department which attempts to define "unworthiness or incompetence", adopted December 15, 1974, the effective date of the foregoing statutes; are unconstitutional and void, being on its face in violation of Amendment XIV, Section 1 of U. S. Constitution, referring to Due Process and Equal Protection of the Laws;

2. The terms "unworthiness" and "incompetency" (Sec. 11 of Act) on the part of a broker/or salesman all involve real estate transactions and do not apply to alleged violations of ordinances in buildings owned by Plaintiff herein as a principal, merely because he had a real estate broker's license;

3. The refusal to grant Plaintiff a continuance on June 14, 1977 after he had requested same by phone and letter of June 8, 1977, or to grant him an immediate hear-

-ing then or thereafter, (as set forth in-pages 16 to 19 hereof), so that the Order of Revocation was entered Ex Parte on October 21, 1977, was a denial of Due Process and Equal Protection of the Laws;

4. The Department's prejudice and bias evidencing great hostility against him, as not giving any prior notice of complaints against him as to the operation of his real estate, not giving him notice before filing Complaint against him, the extensive media publicity in which it participated referring to him as a slum operator, in not giving him an opportunity of a hearing so that he might have an opportunity to show that all 3 witnesses had committed perjury, that its Counsel uttered inflammatory and false argument which brought about the revocation, that it had pre-judged him as guilty, all

denying Plaintiff Due Process and Equal Protection of the Laws.

5. The Department's allegations in its Complaint (APPENDIX F) of housing violations which preceded the effective date of the Act of December 15, 1974, its failure to allege knowledge by Plaintiff of any violations of ordinances as required by Rule XI, its failure to make such Findings of Fact, first alleging same in its conclusions of law, and denial of a hearing to Plaintiff amounted to a denial of Due Process and Equal Protection of the Laws.

6. In exacting the extreme penalty of revocation of his license by reason of its bias and prejudice, the Department violated Plaintiff's rights and privileges of Amendment VIII of the United States Con-

stitution against infliction of cruel and unusual punishments.

THE QUESTIONS ARE SUBSTANTIAL

1. Sec. 115(e) (11) and (21) and Sec. 104.02(a) of Chap. 114½ of Illinois Revised Statutes and Rule XI of the Department (Property Management) are unconstitutional and void being in violation of the XIVth Amendment, Sec. 1, of the U. S. Constitution referring to Due Process and Equal Protection of the Laws. The foregoing statutes, Department Rule and applicable constitutional amendments XIV, Sec. 1 and VIII are set forth in APPENDIX I. XIVth Amendment Sec. 1 of the U. S. Constitution provides:

> DUE PROCESS AND EQUAL PROTECTION. No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

The amended statutes Sec. 115(e) (11) went into effect on December 15, 1974 on the enactment by the Department of Rule XI referring to Property Management, which attempted to define "unworthiness" and "incompetency". Sec. 115 refers to issuing, renewing, suspension or revocation of certificate. (e) refers to registrant acting as a broker or salesman, or where in handling his own property is found guilty of: (11) having demonstrated unworthiness or incompetency to act as a real estate broker or salesman in such manner as to safeguard the interest of the public. (21) refers to disregarding or violating any provision of the Act or Department Rules. Sec. 104.02 (a) refers to "Broker", its definition, to include one for his own account (a principal) while engaged in the business of buy-

ing or selling real estate.

Sec. (11) violates Due Process, for its terms

> "having demonstrated unworthiness or incompetency to act as a real estate broker or salesman in such manner as to safeguard the interest of the public"

in the words of Duffy vs. Hurley, 402 Ill. 562 (1949)

> "are so vague, indefinite and uncertain that men of ordinary intelligence must necessarily guess at their meaning and differ as to their application."

Another case in point, Krebs vs. Thompson, 387 Ill. 471 (1944) decided:

> "Statute must not be vague, indefinite, or uncertain. A statute must be complete when it leaves the legislature and be sufficiently explicit to advise everyone what his rights are under the act and how he will be affected by its operation, and a statute which is so incomplete, vague, indefinite and uncertain that men of ordinary intelligence must necessarily guess at its meaning and differ as to its application is unconstitutional as denying due process of law."

Decisions on the subject are numberless,

to include: Geiger v. City of Eagan,

618 F 2d 26 (1980), which provides --

> "A statute which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process.
> "Due process has two requirements: that laws provide notice to ordinary persons of what is prohibited and that they provide standards to law enforcement officials to prevent arbitrary and discriminatory enforcement."

Also, Hirschkop v. Snead, 594 F 2d 356 (1979)-

> "Vague rules offend the due process clause because they deny a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.
> "A vague disciplinary rule offends the due process clause because it impermissibly delegates basic policy matters to officials charged with enforcement for resolution on an ad hoc and subjective basis with attendant danger of arbitrary and discriminatory application."

Bearing the foregoing decisions in

mind, can a man of ordinary and common intelligence understand the meaning or the application of the words in Sec. 115(e)(11) "having demonstrated unworthiness or incompetency to act as a real estate broker"? The answer is obviously, "No", for different people may well have different meanings of what constitutes "unworthiness" or "incompetency". No proper guidelines have been set out in the statute (Sec. 11) for their determination. Hence, people of ordinary and common intelligence must necessarily guess at their meaning and differ as to their application.

The Department by Rule XI attempted to define and give meaning to the words. In its Rule XI (See APPENDIX I) it states that "unworthiness and incompetence" may consist of both acts or omissions to act.

Omissions to act and a failure to "safeguard the interest of the public" in buying, selling or renting real estate wherein the premises are known by registrant to be in violation of ordinances for the protection of the public shall be deemed unworthiness and incompetence. The attempted definition by the Department of "unworthiness or incompetence" was without authority of law for it was attempting to execute the law by the definition, rather than to merely execute the implementation thereof.

Sec. 108 of Chap. 114½ of the Illinois Statutes on Rules and regulations gives the Department authority to make and enforce reasonable rules and regulations for conducting examinations and in connection with the issuance, renewal, suspension, revocation or recall of certificates (See APPENDIX I).

Sec. 108 did not grant any lawful authority to the Department to define the words, thus making the law. Such an authority is vested only in the legislature and not in an administrative body, the Department.

People v. Tibbitts, 56 Ill. 2d 56 (1973), page 58 line 28 provides:

> "The power to make the laws. . . vests in the legislature. . . . It is a power which cannot be delegated to another body, authority or persons. . ." (citations)

> "There is a distinction between the delegation of true legislative power and the delegation to an authority to execute the law. The former involves discretion to what the law shall be: the latter is merely an authority or discretion as to its execution. . ."

The latter (the Department) only had the authority to carry out the legislature's directions. Through Rule XI and Sec. 108 it attempted to create the law. The Tibbitts, Geiger and Hirschkop are clear

that the Department had no such authority.

Its attempt through Rule XI does not clear the vagueness of Sec. 11 so that persons of ordinary intelligence would no longer have to guess as its meaning or differ as to its application. Sec. 11 uses the words "unworthiness or incompetency"; Rule XI uses "unworthiness or incompetence" as though they have the same meaning. Incompetency may well mean mental illness, but incompetence may mean lack of capacity to do a job. Then again "unworthiness" and either "incompetency" or "incompetence" are not synonymous as both Sec. 11 and Rule XI infer. Their meanings are different. Words and Phrases, Vol. 43A page 196 defines "unworthiness" thusly:

"The word "unworthiness" within

> statute authorizing Real Estate Commission to suspend or revoke license of real estate brokers deemed to be guilty of conduct which demonstrates unworthiness signifies lack of those ethical qualities that befit the vocation,"

citing Goodley v. New Jersey Real Estate Commission, 29 N.J. Super. 178 (1974). The wording "ethical qualities" should have excluded Plaintiff from the outset, for he was a principal, never a broker, and no real estate transaction was involved, he having been charged with alleged housing violations in his own buildings which were beset with great vandalism in a declining area. This subject will be discussed further in Point 2, that the charge under Sec. 11, Unworthiness and Incompetency apply only to cases of real estate transactions. Department Rule XI is subject to different interpretations

by succeeding real estate commissions for the Rule is not mandatory but discretionary by its vagueness. It is not Sec. 11, but the will of the Department under Rule XI that determines when and against whom to take action: here, the Plaintiff. It is contrary to the spirit of Geiger that

> "Due process has two requirements: that laws provide notice to ordinary persons of what is prohibited and that they provide standards to law enforcement officials to prevent arbitrary and discriminatory enforcement." (supra, page 27)

Also, Hirschkop (supra) cited the same.

Sec. 11, Rule XI and Sec. 108 gave no authority to the Department to make an adjudication of housing violations, for only a Court has such authority.

> "Where a statute grants discretionary authority to an administrative body or officer but does not lay down rules and definitions for the guidance of such body or officer in the exercise

> of such discretion, it is incomplete and invalid." (People ex rel. Rice v. Wilson Oil Co. et al, 364 Ill. 406 (1936)

The vagueness and uncertainty of the enabling statute, Sec. 11 and Sec. 108(a) whereby the Department revoked Plaintiff's license by reason of alleged violations of ordinances was a violation of Due Process.

Sec. 108(c) 3 (APPENDIX I) provides that notice be given to registrants for guidance or assistance. None such notice was ever given to Plaintiff. Had such notice been given Plaintiff he would have learned of changes in the statutes relating to Real Estate Brokers and Salesmen, Sec. 104.02(a) Brokers (its definition) and Sec. 115(e) where registrant is found guilty of disciplinary conduct, to include principals for the first time in the subject of the Act without mentioning them

in the title. Such action is in violation of Due Process of Law for vagueness in failing to recite "owners" in addition to "brokers and salesmen" in the title. It is contrary to the Hirschkop case (supra pg. 27):

> ". . . they deny a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly."

On the same subject Dee-El Garage v. Korzen, 53 Ill. 2d 1 (1972) provides:

> "Amendatory provisions that are not germane to the subject expressed in the title of the original act are unconstitutional unless the title to the act is also amended to embrace the mew matter."

Stolze Lumber v. Stratton, 386 Ill. 334 (1944) on the same subject says:

> "Provisions of an act must be within subject expressed in title."

Dee-El Garage and Stolze refer to Illinois Constitutions of 1870 and 1970, which pro-

vide respectively in Art. IV, Sec. 13:

> "No bill shall embrace more than one subject, and that shall be expressed in the title." (1870)

and in Art. IV, Sec. 8 (D):

> "Bills, . . . , shall be confined to one subject." (1970)

By their vagueness Sec. 104.02(a) Brokers (its definition) to include a person

> "who performs any of the foregoing acts for his own account . . ."

and Sec. 115(e) to include a person who

> "in handling his own property, whether held by deed, option, or otherwise . . ."

are unconstitutional and void in violation of Due Process of Law.

> "The word "broker" has a fixed, definite meaning, as defined by the authorities, and the character and attributes of a broker cannot be imposed by an ordinance in an attempt to make one a broker, who is not a broker, by definition in an ordinance."

The above citation is syllabus 6 in City of

Chicago v. Dollarhide, 255 Ill. App. 350 (1930). City of Chicago v. Barnett, 404 Ill. 136 (1949) in support says:

> "Broker - Who is a Broker? A Broker is an agent who bargains or carries on negotiations in behalf of his principal as an intermediary between the latter and third persons in transacting business relative to the acquisition of contractual rights, or to the sale or purchase of any form of property, real or personal, the custody of which is entrusted to him for the purpose of discharging his agency."

Both cases are cited with approval by Bittner v. American-Marietta, 162 F Supp. 486 (1958). Bouvier defines the word:

> "brokers - Those who are engaged for others in the negotiation of contracts relative to property, with the custody of which they have no concern. . . ."

It is obvious that "broker" cannot mean a principal, nor a "principal" a "broker", nor can we call "day" "night". Neither can a "principal" and "broker" be one.

Plaintiff was the owner and therefore could not be charged with being a "broker" to come under the provisions of this definition. No legislation can change the fixed meaning of a word: in this instance, "broker". The Act is contrary to Stolze Lumber v. Stratton (Supra) which states:

> "Statutes--legislature may not declare that to be a fact which is not a fact."

And to Central Television Service v. Isaacs, 27 Ill. 2d 420 (1963):

> "It is constitutionally impermissible to define terms in a legislative enactment contrary to their common meaning and contrary to the purpose and spirit of the act."

The purpose and spirit of the Act is for brokers and salesmen only, and not for owners (the Plaintiff herein).

As set forth on page 36, line 8, Sec. 104.02(a) Brokers(its definition) and Sec.

·115(e) referring to disciplinary action against registrant who, in handling his own property, is found guilty of violations hereunder (see APPENDIX I); said statutes are unconstitutional and void in violation of Due Process of Law.

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2. The terms "unworthiness" and "incompetency" (Sec. 11) on the part of a broker or salesman all involve real estate transactions and do not apply to Plaintiff, who as an owner of real estate is charged with alleged housing violations, merely because he had a real estate broker's license.

56 American Law Reports (2d) 579 contains a treatise on "unworthiness" and sets forth decisions under statutes referring to conduct demonstrating "unworthiness" on the part of real estate brokers and salesmen

that shall constitute grounds for revocation or suspension of their licenses. All of the decisions thereunder involve real estate transactions of purchase, sales or loans on property. None of them involve proceedings for the revocation or suspension of the real estate broker's license of an owner of property (Plaintiff herein) for alleged housing violations on a charge of "unworthiness". Some decisions are:

Goodley (Supra, pg. 31-32)- for which Words and Phrases defines "unworthiness" ". . . signifying lack of those ethical qualities that befit the profession". He was charged with unworthiness, incompetency, bad faith or dishonesty. As broker and president of corporation, he sold property, earning a commission and profit in sale. Title turned out to be bad legally so that buyer sustained a loss for which

he refused to reimburse her. The charges of unworthiness or incompetence are accompanied by other charges.

Lo Piccolo v. Dept. of Reg. & Education, 51 Ill. App. 3d 1077 (1977)-- dishonest dealings. Broker advised complainant that her property was worth only $2200, bought it through nominee for $2200 and later resold it for $19,000. He violated statute as a real estate broker--demonstrated unworthiness to act.

Others are: Davis v. Mo. Real Est. Com. 211 SW. 2d (1948)-- charged with untrustworthy or improper fraudulent or dishonest dealings, demonstrating bad faith or gross incompetence. Saleson v. Dept. of Reg. 95 Ill.App.2d 104 (1968), cited by Court (Appendix A, pg.590) -- failure to account for or remit moneys or documents coming into his possession

(the remittance checks sent by him to his client being returned N.S.F.).

Three recent Illinois cases on the subject: Ranquist v. Stackler 55 Ill.App. 3d 545 (1977)-- dishonest dealing (racial steering); McKey & Poague v. Stackler 63 Ill. App. 3d 142 (1978)-- same charges as in Ranquist with same discipline of sixty days suspension of license; and Coles v. Dept. 59 Ill.App.3d 1046 (1978)- where plaintiff, a public official, had been found guilty in the federal court of Interference with Commerce by Threats or Violence (a form of bribery) and sentenced to 3 years probation, and 3 years suspension of license. These cases cite the reasons for the enactment of the laws on "unworthiness and incompetency". Ranquist on Page 551 says:

"The predominant purpose of the State in licensing a trade or profession is the prevention of injury to the public by assuring that the occupation will be practiced with honesty and integrity, excluding from the profession those who are incompetent or unworthy."

Those decisions, together with Goodley (Supra 31-32), give the guidelines for determining propriety in performing duties as a broker: honesty and integrity. It also infers that a real estate transaction must be involved without conduct associated with a lack of honesty or integrity. An alleged charge of housing violations against owner of buildings (Plaintiff herein) who happens to have a broker's license unrelated thereto does not come within the meaning of the decisions on honesty and integrity and "lack of those ethical qualities that befit the profession", and therefore cannot involve a charge of unworthiness and incompetency.

The terms unworthiness or incompetency (Sec. 11 of Act) on the part of a broker or salesman all involve real estate transactions and do not apply to Plaintiff as an owner of buildings because of alleged housing violations in buildings owned by him and where no real estate transactions were involved.

Sec. 115(e) (11) and (21) and Sec. 104.02 (a) of Chap. 114½ of Illinois Revised Statutes and Rule XI of the Department are unconstitutional and void being in violation of the XIVth Amendment, Sec. 1 of the U. S. Constitution referring to Due Process and Equal Protection of the Laws. Because of the vagueness of Sec. 11 (unworthiness or incompetency), people of ordinary intelligence must necessarily guess at its meaning and differ as to its application.

3. The refusal by Department to grant Plaintiff a continuance on June 14, 1977 after he requested same by phone and letter of June 8, 1977, or an immediate hearing then or thereafter, as set forth in pages 15 to 19 hereof, so that Order of Revocation was entered Ex Parte on October 21, 1977 and was a denial of Due Process.

Plaintiff first received notice of these proceedings on January 25, 1977 returnable February 22, 1977without any prior communications from the Department. The hearing was continued to April 26th and then to June 14, 1977, when he expected to receive a further continuance by reason of a recurrence of his illness requiring rehospitalization. He made a phone call and sent a letter, as directed by Department Counsel, on June 8th requesting same. Ar-

riving just before 12:15 p.m. on June 14th (R.12) to get the new date, he was informed that the proceedings had ended but 15 minutes earlier. The Committee and Counsel were still present and Plaintiff asked for an immediate hearing, which was denied. The Department denied receiving the letter and has since refused to grant him a hearing. The Order of Revocation was thereafter entered Ex Parte on October 21, 1977.

The Department persisted in denying receipt of the letter throughout the Department proceedings, the 2 cases thereafter, until November 9, 1979 when, in filing its Brief in the second Appeal, it first admitted its receipt. It even maintained its silence, concealing its receipt, on August 9, 1978 before the trial judge, who said he found no record of Plaintiff's

letter requesting a continuance and dismissed his Complaint for Administrative Review (pages 18-19 hereof), affirming the Order of Revocation.

> "The fundamental requisites of Due Process are notice and opportunity to be heard." Denton v. Ellis 258 F Supp. 223 (1966)
>
> "Due process is denied where the procedure tends to shock the sense of fair play." Howard v. U.S. 372 F 2d 294 (1967)

The Department's conduct denied Plaintiff "an opportunity to be heard" and its procedure tends to shock the sense of fair play." Plaintiff was denied Due Process of Law.

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4. The Department's prejudice and bias evidencing great hostility towards Plaintiff, as set forth in his Summary of Argument on Page 22 hereof amounted to a denial of Due Process of Law.

"Bias or prejudice or hostility of fact-trier becomes justiciable issue only as it bears on fairness of hearing."
A. O. Smith Corp. v. NLRB 343 F 2d 103

Such bias and prejudice was evident. No prior notice was ever given him (Pg. 6 hereof) of any complaints against him as to the operation of his buildings for correction, if needed. He believes he was entitled to receive such courtesy under law. The Department would have learned of the unbridled vandalism throughout the declining income, area that took place (with little/ finally none) the assaults on his staff, even him, driving the staff away, the destruction in the buildings, and finally his physical collapse, necessitating Open-Heart Surgery Thanksgiving Day, 1976. On his release from the hospital in Jan. 1977, he disposed of the buildings at great financial loss, together with

closing his law office, for he was unable to continue any further.

He had disposed of his buildings before the commencement of these proceedings with the exception of the 6-flat building at Gunnison, where his sister resided as resident agent. That too has since been disposed of in 1978. He was the only person against whom proceedings had been brought by Department for license revocation for alleged housing violations, being singled out for disciplinary action (Plff. complaint R. 6).

Before the return date of the proceedings on February 22, 1977 (Pg. 8 hereof), Department issued press releases, appeared on radio and T.V. broadcasts showing an obvious prejudgment of the case. Plaintiff did not know what prompted such action and

so requested Discovery (R. 370) to include names of people who submitted complaints, and information as to Department participation in the media publicity. That was denied him by the Department, and affirmed by the Appellate Court (Appendix A, Pg.589 ln. 23). That was Error contrary to the Smith case (Supra), and a denial of Due Process of Law. Some of the complainants might well have been the seekers or buyers of plaintiff's real estate.

In denying plaintiff a hearing, he was prevented from showing that all 3 Department witnesses testified falsely (R. 47-53). The Court's Opinion (App. A, Pg.583 ln. 12) that the violations were not corrected until a Receiver was appointed and he achieved 90% compliance was based on the witness Sterling's false testimony. Plaintiff did the work; not the Receiver

After Receiver resigned, his report showed receipts of $1951.00 in 2 buildings of 95 units, disbursements of $1450.00 leaving a balance of $510.00 without mentioning any repairs whatsoever during period of receivership from Aug. 1, 1975 to Sept. 11, 1975. Thereafter, Plaintiff made all repairs needed to comply, and suit was dismissed Sept. 23, 1976.

Also, as set forth in Court Opinion (APPENDIX A, Pg. 582 Ln. 24), the reference to "the fracture of an exterior wall" was not true, for it and the other items were repaired as set forth in pages 12-14 hereof and Record 48-50. Inspector Rollins, in an effort to prejudice the Committee against the Plaintiff, falsely stated (Record 328, Ln. 10):

.."The judge got so disgusted with this man that the judge said he could not

give him a fair trial, and we are here"

to which Committee member Sneed replied:

> "And he is running around scott free... something should be done. He is subject to some sort of legal actions..."

This reference to the false and untrue testimony of witnesses shows that Court erred (APPENDIX A, Pg. 590 Ln. 9) saying:

> "...However, he points to no specific statements and makes no effort to demonstrate the untruth of any testimony on those pages or elsewhere in the record. In view thereof, we reject this argument."

In Record, pg. 43-53, Plaintiff in a Petition to Vacate the Order of Revocation sets forth the untruth of the testimony of witnesses, as well as in argument before the Court. If Plaintiff were granted a trial he could disprove best the ExParte Order.

The Court also erred (App. A, pg. 590, ln. 4) referring to Department Counsel:

> "...Thus, having been informed by Plaintiff as to the content of those orders,

it is not reasonable to believe the Committee was misled by the references to them by defendants' counsel."

The Committee was misled by Counsel in his untruthful presentation of exhibits to wit:

"No. 14 will be a copy of an order entered June 5, 1974 regarding 5726 Winthrop and ordering the building to be vacated because of the violations."(R. 345)

When in truth, it was an order directing Plaintiff to secure vacant apartments and rid premises of vermin. Also, Exhibit 17:

"a petition filed in July of 1975...by Rasky... It refers to an order of June 18, 1975 in which a fine was entered against Mr. Rasky of $2200 for Building Code violations."

when in truth Exhibit 17 was a Motion on July 17, 1975 by Plaintiff to vacate an Order indicating that a fine should be entered against Plaintiff in that sum.

Another comment by Mr. Sheffres (R. 134):

"The point is Madam Director, that these violations continued and continued after long notice. ...Therefore the fact that

> some..may have preceded the effective date of Rule XI is of no moment since the violations were of a continuing nature and quite clearly, under law, you can make certain things illegal..."

In his final argument (R. 347, ln. 13):

> "Basically, I think we showed that Mr. Rasky has owned, operated and controlled four buildings. Over a period of years, these buildings went bad. He continued to rent the apartments in these buildings to people, collect the rents and pocket it."

Those remarks by Mr. Scheffres are malicious falsehood. In his Complaint for Administrative Review, this case (Exhibit 7, R. 58), Plaintiff alleges that from 1973 through 1976 (the years charged in the revocation proceedings for alleged violations) he lost $143,509.00. During the year 1977 he lost a further sum of $48,585.00, that being the year when Mr. Scheffres made the false statement that "he (Mr. Rasky) continued to rent to people, collect the

rents and pocket it." The foregoing inflammatory and false argument of Department Counsel served to bring about the revocation of Plaintiff's license and constituted reversible error. U. S. v. Meeker 558 F. 2d 387 (1977) says:

> "Inflammatory statement on part of prosecutor implying that defendant was guilty of engaging in the conduct for which he was on trial is never permissible."

Referring to the Court Decisions, it might be noted that, although expressing sympathetic views toward Plaintiff, the Appellate Court has evidenced an indication not to rule for the Plaintiff. That attitude seemed to apply to both Decisions, the first one for Declaratory Judgment (APPENDIX B) and the second one (for Administrative Review, APPENDIX A, this Appeal). Both were heard by the Fifth Division.

In its first decision, on May 26, 1978, the Court in effect stated that since the license had already been revoked on Oct. 21, 1977, it rendered the proceedings moot so that no relief could be granted, that Plaintiff should have petitioned for a rehearing. On being advised that such was done, the Court merely deleted all reference thereto from the Opinion and let the rest stand. In its Decision on May 31, 1978, ruling against him (APP. B 636 ln. 6) the Court stated that even if their pronouncements were favorable to him it would not have restored his license, that:

> "Plaintiff should have pursued his administrative remedies, and perhaps have consolidated his causes on appeal. . . "

Then, on being advised that he had filed a Complaint for Administrative Review, the Court again ruled against him on July 28, 1978

(APPENDIX B, 637 Ln. 7), saying:

> "However, since plaintiff now has the opportunity through administrative review . . . any such determination by this tribunal would be unnecessary . . . Plaintiff is assured of receiving a hearing on the merits of his contentions. . ."

The trial judge once more dismissed his Complaint for Administrative Review, and on this Appeal (APPENDIX A) the Appellate Court did not stand by its first Opinion, by not granting Plaintiff "a hearing on the merits of his contentions", nor a hearing on his contentions of the "presence of alleged constitutional challenges to the statute's validity", referring particularly to Sec. 104.02(a) Broker, its definition. Once more, in issuing its current Decision (APP. A, Pg. 588 Ln. 26), the Court stated a sympathetic view towards Plaintiff:

> "Plaintiff is correct in his statement that some of the Committee's findings of

defective conditions appear to be unsupported by the evidence. We believe, however, that there is substancial evidence to support many of the conditions found to be existent and, while we do not condone the imprecise draftsmanship reflected in the findings of fact, we find that a conclusion opposite to the decision of the Department is not clearly evident from the evidence."

The Decision by the Court shows a doubt by its very wording as "some of the Committee's findings of defective conditions appear to be unsupported by the evidence". Surely it is contrary to Worden v. State Police Merit Bd., 30 Ill. App. 2d 323:

"Finding of administrative board must be supported by convincing evidence."

Even the Court did not seem convinced as indicated by its phrasing. All of the foregoing in Point 4 was a denial of Due Process of Law.

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5. The Department's allegations of

housing violations preceding the effective date of Act of December 15, 1974, its failure to allege knowledge by Plaintiff, as required by Rule XI (APPENDIX I), of such violations in its Complaint and of identifying them by ordinances specifically, failure to make such findings of fact (R. 12), first alleging knowledge thereof in Conclusions of Law (R. 15) amounted to a failure to set forth a cause of action and failure of proof.

> "Judgment order must be supported by allegations in Complaint as well as by evidence." (Larson v. City of Loves Park, 48 Ill. App. 2d 191)

That, together with refusing Plaintiff a hearing to dispute the charges against him, amounted to a denial of due process of law.

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6. In exacting the extreme penalty of

revocation of his broker's license by reason of its bias and prejudice, the Department violated Plaintiff's rights and privileges under Amendment VIII of the U.S. Constitution against infliction of cruel and unusual punishments. On October 21, 1977 the Department revoked Plaintiff's real estate broker's license. As the Court knows, Plaintiff is an attorney and that has been his sole profession since 1929. He has never used the license. Plaintiff is disputing the decision by this Appeal. The alleged charges for the violations as mentioned in the public release, included falling and peeling plaster and plumbing and mice and roach infestation and defective, exterior walls. It does not mention "unworthiness or incompetency". Other announcements to the public of dis-

ciplinary action all set forth the causes. Penalties have ranged from Censure in the case of one found guilty of dishonest dealings in addition to unworthiness and incompetency, Ranquist and McKey and Poague et al supra for the same charge (racial steering) received 60 day Suspension Orders. Plaintiff's receipt of the extreme penalty of revocation is the first and only such Order for alleged housing violations. It does not seem that the "offense", which is denied, should warrant the extreme penalty of revocation. This is a violation of the Eighth Amendment to the U. S. Constitution which provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

While that Amendment has generally been applied to criminal charges, a revocation of

a license is penal in its nature, carries with it a finding of guilty, destroys the reputation of a professional person (particularly a lawyer), and warrants the application of the Amendment for relief from the "cruel and unusual punishment inflicted".

The harsh punishment, together with Plaintiff's argument in the previous 5 points hereof, are a violation of due process of the laws as set forth in the 14th Amendment, Sec. 1 of the U. S. Constitution.

CONCLUSION

For the reasons stated, Plaintiff-Appellant moves this Court to review the foregoing proceedings, declare Section 115(e)(11) and (21) of Illinois Revised Statutes, Chapter 114½, Real Estate Brokers and Sales-

men (now Sec. 5732 of Chap. 111, Professions and Occupations), Department Rule XI, and Section 104.02 Broker (now Sec. 5706(a) of Chap. 111) of the Illinois Revised Statutes unconstitutional and void, being in violation of Amendment XIV, Sec. 1 of the U. S. Constitution referring to due process of law, to reverse the Decision of the Appellate Court of Illinois, which affirmed the Decision of the Circuit Court of Cook County, and which affirmed the Order of the Department revoking his real estate broker's license, or such other relief as to the Court shall seem meet.

Respectfully submitted,

BENJAMIN A. RASKY
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Attorney at Law
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Skokie, Illinois 60077
(312) 679-8992

PROOF OF SERVICE

STATE OF ILLINOIS)
COUNTY OF COOK) SS

BENJAMIN A. RASKY, being duly sworn, on oath deposes and says that he is a duly licensed attorney at law in the State of Illinois and licensed to practice in the U. S. District Court for Illinois and certifies that he served 3 duplicate copies of this Jurisdictional Statement on the Hon. Tyrone C. Fahner, Attorney General of Illinois and attorney for Defendants, by mailing in the U. S. Postal Service main station, Chicago, on June 24th, 1981, and further certifies that all Appendices herein are true and correct duplicates of the original documents.

Benjamin A Rasky

SUBSCRIBED AND SWORN
to before me, a notary public,
this June 24th, 1981

Notary Public

APPENDIX A

OPINION OF APPELLATE COURT 79-334

REPORTED AS 87 Ill. App. 3d 580 (1980)

BENJAMIN A. PASKY,	) APPEAL FROM THE
	) CIRCUIT COURT
Plaintiff-Appellant,	) OF COOK COUNTY
	)
v.	) HONORABLE
	) ARTHUR L. DUNNE
DEPARTMENT OF REGISTRA-	) PRESIDING
TION AND EDUCATION and	)
JOAN ANDERSON, Director,	)
	)
Defendants-Appellees.	)

MR. PRESIDING JUSTICE SULLIVAN DELIVERED the opinion of the court:

This is an appeal pursuant to the Administrative Review Act (Ill. Rev. Stat. 1977, ch. 110, par. 264 et. seq.) from an order of the circuit court affirming the revocation of plaintiff's real estate broker's license by the Department of Registration and Education (Department).

[Orig. Pagination - 582]

The Department issued a complaint against plaintiff setting forth a number of conditions existing in certain apartment buildings owned and operated by him which allegedly were in violation of the Municipal Code of Chicago and endangered the health and safety of the inhabitants. The complaint asked that plaintiff's real estate broker's license be suspended or revoked, pursuant to Ill. Rev. Stat. 1975, ch. 114½, pars. 115(e) (11), (21) and Rule XI of the Department Rules and Regulations.

The real estate examing committee of the Department (Committee) held a hearing on the complaint at which plaintiff, an attorney, did not appear. The first of two City of Chicago code inspectors testified to inspections of three buildings. One was an occupied 63-unit apartment

building located at 5621-25 North Winthrop, concerning which he stated that in November 1973 he found approximately 25 building code violations--including peeling paint, broken windows, leaking faucets, rat debris, garbage, and general neglect to locks and door; that on January 3, 1975, he noted that 11 of the violations had not been corrected; that on November 18, 1975, he found the premises to be in worse condition than they were in November 1973; that an inspection in June 1976 revealed numerous code violations--including the [Page 582, ln. 24] fracture of an exterior wall, peeling paint, broken plaster, leaking faucets, defective plumbing, rats, roaches, garbage, broken windows, and broken tiles; that during the period of November 1973 through June 1976, he had observed persons

living in this building as tenants and, although some of the building code violations were readily correctable, they had not been remedied on June 21, 1976; and that plaintiff had acknowledged ownership of the building in question. This witness then gave testimony concerning an occupied apartment building at 1064-68 Berwyn, also known as 5301-09 North Winthrop. He stated that his inspection revealed code violations of broken plaster, peeling paint, rats, rats, roaches, a defective [Pg. 582, ln. 34] boiler, and a rusted out steel [Pg. 583] fire escape; that during the course of inspections from 1973 to approximately 1976, the building was never brought into compliance with the building code although the violations were readily correctable; and that plaintiff acknowledged ownership of

the building. The third inspection of the witness was on June 9, 1976, [Pg. 583,L. 5] of an occupied six-story apartment building located at 832 West Gunnison, concerning which he testified that he found 21 code violations which included broken plaster, peeling paint, garbage, mice and roaches, and defective plumbing; that these violations could easily have been corrected, but later inspections disclosed they had not been; and that plaintiff acknowledged owning the building.

The other code enforcement inspector testifying to an inspection of a 61-unit partially occupied apartment building located at 5726-28 North Winthrop stated that he found 39 building code violations; that plaintiff acknowledged ownership of this building since 1959; that the violations

included general exterior neglect,

[Pg. 583, Ln. 16]

a chimney in a dangerous condition, improper doors, no boiler room door, holes in the boiler room wall, peeling paint, rusted fire escape floors, broken concrete walk, the lack of lights on the fire escape, holes in the clay tile in the basement, holes in the plaster throughout the building, evidence of mice in the building, broken windows, [Pg. 583, Ln. 21] and rotting window sashes; that these violations were not corrected until a receiver was appointed in 1975 and plaintiff was directed by the court to deposit $16,000 for repairs of that building; that the violations at the building could have been repaired rather quickly; and [Pg. 583, In. 25] that the receiver achieved 90% compliance with the building code, but the building has since reverted to a state of disrepair.

The Department offered into evidence the pleadings of the City of Chicago and plaintiff in prior proceedings involving alleged building code violations of similar nature in the buildings in question, for the stated purpose of establishing ownership of the buildings and demonstrating notice of alleged violations.

Acting on the Committee's recommendation, the Department revoked plaintiff's real estate broker's license. The circuit court affirmed this decision, and this appeal followed in which plaintiff contends that section 15 of the Real Estate Brokers and Salesmen License Act, Ill. Rev. Stat. 1975, ch. 114½, pars. 115(e) (11), (21), and Rule XI of the Department Rules and Regulations are unconstitutional; that the complaint did not state a cause of action;

that he was erroneously refused a continuance of the hearing; that Department bias denied him a fair hearing; that the Department failed to comply with plaintiff's discovery motion; that Department witnesses gave false testimony; that the hearing was conducted in an unfair manner; that the agency's findings were not supported by substantial evidence; that revocation of his broker's license was arbitrary, erroneous, and constituted cruel and unusual punishment as well as a denial of due [Pg. 584] process and equal protection; and that he was prejudiced by the Committee's failure to procure a transcript.

OPINION

1. Plaintiff first contends that section 15 (e) (11), (21) of the Real Estate Bro-

kers and Salesmen License Act (Ill. Rev. Stat. 1975, ch. 114½, pars. 115(e) (11), (21)) (the Act)[1/] and Department Rule XI--the authority under which his license was revoked--"are unconstitutional and void, being on its face [sic] and in violation of Art. 1, Sec. 2 of the Ill[inois] Constitution and the 14th Amendment, Sec. 1 of the U. S. Constitution, referring to due process and equal protection of the laws." Section 15 provides, in part:

> "The Department may refuse to issue or renew, may suspend or may revoke any certificate of registration, or may censure or reprimand any registrant hereunder for any one or any combination of the following causes:
>
> * * *
>
> (e) Where the registrant in performing or attempting to perform any act as a

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1/ Section 15 (e) (11), (21), is currently codified at Ill. Rev. Stat. 1979, ch. 111, pars. 5732 (e) (11), (21).

real estate broker or salesman, or where such registrant, in handling his own property, whether held in deed, option, or otherwise, is found guilty of:

* * *

11. Having demonstrated unworthiness or incompetency to act as a real estate broker or salesman in such manner as to safeguard the interest of the public;

* * *

21. Disregarding or violating any provision of this Act, or the published rules or regulations promulgated by the Department to enforce this Act; * * *."

Rule XI of the Department Rules and Regulations states:

"Unworthiness or incompetence on the part of a registrant as set forth in [Section 15(e) (11)] of the Act may consist of both acts and omissions to act. Omissions to act and a failure to safeguard the interests of the public in the buying or selling, the negotiation of sales or exchange of real estate, the leasing or renting of real estate wherein the premises are known by the registrant to be in violation of ordinances made for the protection of the public in regard to fire, health, sanitation and other hazards shall be deemed 'unworthiness or incompetence.'"

In support of this contention, plain-

tiff argues that the Department's complaint does not specify in detail the municipal code violations; that it fails to allege that he had notice of them; and that, in any event, the [Pg. 585] violations preceded the effective date of the statute under which this action was brought. Because these arguments do not concern constitutionality and were restated by plaintiff in support of other contentions, they will be considered later in this opinion.

Plaintiff does, however, urge a constitutional argument that the adjudication of housing code violations by an administrative body is the improper exercise of a judicial function. We find no merit in this contention.

Except in the case of punishment for

crime, due process of law may be afforded by administrative proceedings as well as by the judicial process even though personal or property rights are involved. (Pipe Trades, Inc. v. Rauch (1954), 2 Ill. 2d 278, 118 N.E.2d 319; 1 Am. Jur. 2d Administrative Law § 149 (1962); see also, People ex rel. Radium Dial Co. v. Ryan (1939), 371 Ill. 597, 21 N.E.2d 749 appeal dismissed (1939), 308 U.S. 504.) License revocation is not a criminal prosecution (In re Damisch (1967), 38 Ill. 2d 195, 230 N.E.2d 254; Klafter v. State Board of Examiners of Architects (1913), 259 Ill. 15, 102 N.E. 193) and is neither a judgment of the illegality of such acts nor the infliction of a punishment for them (see Ranquist v. Stackler (1977), 55 Ill.App. 3d 545, 370 N.E.2d 1198). Thus, our supreme court has held

that the revocation of a license is not an exclusively judicial function and therefore may be accomplished through the administrative process. (People ex rel. Rice v. Wilson Oil Co. (1936), 364 Ill. 406, 4 N.E.2d 847; People ex rel. State Board of Health v. Apfelbaum (1911), 251 Ill. 18, 95 N.E. 995.) In the instant case, since the Department, an administrative agency, has the authority to revoke a professional license, it is axiomatic that the agency may determine whether grounds for revocation exist. Such a determination is not a judgment of illegality but, rather, it concerns the competency of a person to practice the profession. We conclude that section 15 of the Act read together with Department Rule XI does not unconstitutionally delegate judicial power to an administrative agency.

Plaintiff next posits that the complaint did not state a cause of action because (1) he was not reasonably apprised of the charges against him since the Municipal Code violations were not specifically set forth; and (2) there was no allegation that had notice of the violations.

Concerning the first reason, we note that charges filed before an administrative agency need not be drawn with the precision required of pleadings in judicial actions. (Guzell v. Civil Service Commission (1974), 17 Ill.App.3d 266, 308 N.E.2d 351.) They need only be drawn sufficiently so that the alleged wrong-doer is reasonably apprised of the case against him to intelligently prepare his defense. Irving's Pharmacy v. Department of Registration & Education (1979), 75 Ill.App.3d 652, 394 N.E.2d 627;

Kelly v. Police Board of the City of Chicago (1975), 25 Ill.App.3d 559, 323 N.E.2d 624.

[Pg. 586]

In the instant case, while specific code provisions were not set forth, the complaint listed in considerable detail the conditions which were allegedly in violation of the code and stated that the charges were brought under section 15 of the Act. It appears clear to us that the complaint reasonably apprised plaintiff of the charges against him.

Concerning this second reason, we note that the failure to allege notice in the complaint is asserted for the first time on appeal and, in view thereof, will not be considered. (See Rosewood Corp. v. Fisher (1970), 46 Ill. 2d 249, 263 N.E.2d 833 appeal dismissed, sub nom. (1971), 401 U.S.

[Pg. 585-86]

928.) Moreover, it appears that notice was established from the pleadings received in evidence of prior contested court proceedings brought by the City of Chicago against plaintiff. These pleadings alleged that similar conditions in three of the buildings in question were in violation of specific provisions of the Municipal Code of Chicago.

We find no merit in a further supporting argument of plaintiff that the complaint was insufficient because "all of the alleged dates of the violations precede the effective date of the statute of December 15, 1974.[2/] The complaint which was sent to plaintiff on January 21, 1977, states that all of the conditions alleged

2/ The statute is not identified, but it appears to be a reference to Rule XI which became effective that date.

continued in whole or in part up to that date, which of course include a period of more than two years prior thereto. We note also that the Act went into effect October 1, 1973. (See Ill. Rev. Stat. 1973, ch. 114-1/2, pars. 101 through 123.) Thus, the relevant statute and rule were in effect during the time of alleged violations.

2. We turn then to the contention that the Department was biased against plaintiff to the extent that he was denied a fair hearing. Plaintiff asserts that bias is demonstrated by various press releases issued by the director and chief attorney of the Department. We are unable to determine whether this contention has merit, however, as the press releases are not included in the record and we take cognizance of and consider only those issues which are

supported by the record. (Moore v. McGaughey (1978), 60 Ill. App. 3d 150, 376 N.E.2d 259; Witek v. Leisure Technology Midwest, Inc. (1976), 39 Ill. App. 3d 637, 350 N.E.2d 242.) He argues also that bias is reflected by the fact that the Committee did not order a transcript of the hearing to review before it recommended revocation of plaintiff's license. However, it is our view that the Committee was not required to do so since it was a relatively short, uncomplicated hearing which conceivably did not require a transcript for review.

Another contention of plaintiff is that the Committee erroneously refused to grant a continuance of the hearing. The record reflects that

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plaintiff was initially notified of a hearing to be held on February 22, 1977; that on February 16, he requested

and was granted a continuance to April 26, 1977. Because on April 25 he moved to dismiss the complaint and for the production of documents and the names of potential witnesses, the hearing was reset for June 14 at 9:30 a.m. On that date, the hearing began at 10:30 a.m. and proceeded ex parte in the absence of plaintiff, who arrived about 15 minutes after the conclusion of the hearing. Plaintiff asserts that he mailed a motion for a continuance on June 8 and, when he arrived at about 12:30 p.m. on June 14 to get the new date, he was told that the hearing was concluded. He made a request at that time to be heard, which was denied. It appears that the Committee did not receive plaintiff's letter until the day after the hearing.

An administrative agency possesses broad discretion as to whether it will allow a motion for a continuance (Brown

v. Air Pollution Control Board (1967), 37 Ill. 2d 450, 227 N.E.2d 754; Fender v. School District No. 25 (1976) 37 Ill. App. 3d 736, 347 N.E.2d 270), but it is a discretion which must be exercised judicially and not arbitrarily (Brown v. Air Pollution Control Board; Ullmen v. Department of Registration and Education (1978), 67 Ill. App. 3d 519, 385 N.E.2d 58).

3. Here, it appears undisputed that the Committee did not receive plaintiff's request for a continuance until the day after the hearing had concluded, and it is obvious that a denial at that time, if in fact there was such, could not be an abuse of discretion.

Plaintiff, however, argues "the refusal to grant plaintiff a hearing on June 14, 1977, before any order was entered and when he arrived but 10 to 15 minutes after the conclusion thereof, amounted to a viola-

tion of due process and equal protection of the law as guaranteed by the Constitution."

4. In support of his due process position, plaintiff repeats other arguments which we have already considered and rejected; namely, that the complaint did not reasonably apprise him of the charges so that he could properly prepare his defense; that the complaint does not allege that he had knowledge of any of the conditions charged as violations; and that he was denied a fair hearing because the Committee was biased against him. Neither do we otherwise find any constitutional infringement in the denial of his request for a hearing upon his late arrival. So far as the record is concerned, the Committee conducted the hearing on the scheduled date with adequate notice to plaintiff, who did not appear.

Indeed, it was at the request of plaintiff that the hearing had been continued from February 22 to the June 14 date. It was set for 9:30 a.m. and was apparently delayed one hour. The Committee, not having heard from plaintiff by 10:30 a.m. did not err in proceeding ex parte. Furthermore, the record does not disclose by offer or proof or otherwise

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the evidence plaintiff might have offered at that time or presented at a later time if a continuance had been requested and granted. In the absence thereof, no prejudice is apparent. Under these circumstances, we find no due process violation and, as plaintff makes no argument in support of an equal protection violation, we will not consider it.

5. Plaintiff next contends that the Department's findings were not supported by the evidence. While the findings of an

[Pg. 587-88]

administrative agency are deemed to be prima facie correct (Ill. Rev. Stat. 1975, ch. 110, par. 274; Lavin v. Civil Service Commission (1974), 18 Ill. App. 3d 982, 310 N.E.2d 858), it is equally true that they must be supported by substantial evidence (Menning v. Department of Registration & Education (1958), 14 Ill. 2d 553, 153 N.E.2d 52; see also, Shallow v. Police Department of the City of Chicago (1978), 60 Ill. App. 3d 113, 376 N.E.2d 1025). As more succinctly stated, an agency decision will not be disturbed unless an opposite conclusion is "clearly evident" from the evidence. Carrao v. Bd. of Education of City of Chicago (1977), 46 Ill. App. 3d 33, 40, 360 N.E.2d 536, 542; Wolbach v. Zoning Board of Appeals (1967), 82 Ill. App. 2d 288, 296, 226 N.E.2d 679, 683.

In the instant case, two code enforcement inspectors testified that

plaintiff acknowledged ownership of the apartment buildings located at 5621-25 North Winthrop, 832 West Gunnison, 5301-09 North Winthrop, and 5727-28 North Winthrop. One also detailed numerous defective conditions in three of the buildings in question. The other detailed numerous defective conditions existing at one of those buildings. The Committee concluded that some of these conditions existed in the buildings until at least the end of 1976.

[Pg. 588, Ln. 26]

Plaintiff is correct in his statement that some of the Committee's findings of defective conditions appear to be unsupported by the evidence. We believe, however, that there is substantial evidence to support many of the conditions found to be existent and, while we do not condone the imprecise draftsmanship reflected in the findings of fact, we find that a

[Pg. 588]

conclusion opposite to the decision of the Department is not clearly evident from the evidence.

We next turn to plaintiff's contention that he was prejudiced by the Department's failure to disclose evidence in its possession which might have been helpful to him. [Pg. 588, Ln. 35] The record reveals that plaintiff sought prehearing discovery, among other things, of the names and addresses of persons who complained to the Department against plaintiff, and of information concerning participation by Department agents and employees in the news media concerning plaintiff and this revocation process. The Department refused the first request on the grounds of breach of confidentiality and irrelevancy. It denied the second request because it was too vague, was irrelevant, and called

for documents not within the Department's control.

[Pg. 589]

In Wegmann v. Department of Registration & Education (1978), 61 Ill. App. 3d 352, 356, 377 N.E.2d 1297, 1301, we stated:

> "The purpose of pretrial discovery is to aid the party in preparation and presentation of his case or defense, assuring the truth and to eliminate as far as possible surprise, so that judgements will rest upon the merits and not upon skillful maneuvering of counsel. [Citations.] Presumably, the need for discovery at the administrative level is the same, so as to require disclosure by the agency of evidence in its possession which might be helpful to an accused. [Citations.] While an administrative body possesses broad discretion in conducting its hearings, its discretion must be exercised judicially and not arbitrarily. [Citations.]"

We take judicial notice of Rule 10.01 of the Department Rules of Practice in Administrative Hearings, which appears to be its only discovery rule:

> "After initiation of a complaint,

any party, upon written request made to the other party, at lease three (3) business days prior to the hearing and within ten (10) days after service of the initial pleading, or within five (5) days after such service of an additional pleading, shall be entitled to (1) obtain the names and addresses of witnesses whom the other party intends to call to testify at the hearing, and (2) obtain a list of all writings and documents which the party proposes to offer in evidence."

6. Here, the Department provided plaintiff with the names and addresses of witnesses it intended to call as well as a list of the documents it proposed to introduce. The Department's refusal to disclose information regarding the persons who made complaints against him and concerning Department employees and news media activities were clearly irrelevant.

Plaintiff next appears to contend that the administrative hearing was conducted to establish his guilt rather than arriving at facts, and thus was contrary to the established rule that a hearing

before an administrative agency should never be a partisan process with an agency on one side arrayed against the individual on the other. Lakeland Construction Co., Inc. v. Department of Revenue (1978), 62 Ill. App. 3d 1036, 379 N.E.2d 859; Gigger v. Board of Fire & Police Commissioners (1960), 23 Ill. App. 2d 433 163 N.E.2d 541.

He argues that counsel for the Department misled the Committee to a belief that the allegations in the prior housing court complaints against him, which were introduced at the hearing, had been adjudicated by a court as such. We stated above that in those prior complaints brought by the City of Chicago many of the same conditions in the same buildings were alleged to be in violation of specific provisions of the Municipal Code and, while some references

were made by defendants' counsel to orders entered in [Pg. 590] those proceedings, we do not see those comments as being misleading. This is particularly so because the Department also introduced in evidence petitions filed by plaintiff in those prior proceedings to vacate the orders entered. Thus, having been informed by plaintiff as to the content of those orders, it is not reasonable to believe the Committee was misled by the references to them by defendants' counsel.

Plaintiff next argues that defendants' witnesses testified falsely at the hearing. To support this argument, he refers to certain pages of the record and concludes they contain false testimony. However, he points to no specific statements and makes no effort

to demonstrate the untruth of any testimony on those pages or elsewhere in the record. In view thereof, we reject this argument.

We reach then plaintiff's contention that the revocation of his broker's license violated the eighth amendment, as well as the due process and equal protection clauses of the United States Constitution.

7. His eighth amendment argument centers in his belief that a revocation of a license is penal in nature and constitutes cruel and unusual punishment.

The United States Supreme Court in Ingraham v. Wright (1977), 430 U.S. 651, 664, 97 S.Ct. 1401, 1408-09, 51 L.Ed.2d 711, 725, stated:

> "The Eighth Amendment provides: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' Bail, fines, and punishment traditionally have been associ-

ated with the criminal process, and by subjecting the three to parallel limitations the text of the Amendment suggests an intention to limit the power of those entrusted with the creminal-law function of government. An examination of the history of the Amendment and the decisions of this Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those convicted of crimes. We adhere to this longstanding limitation * * *." (See Note, The Eighth Amendment and Procedural Due Process as Restraints on the Administration of Corporal Punishment in Public Schools (1976), 26 DePaul L. Rev. 121, 123-28.)

This court, in Saleson v. Department of Registration & Education (1968), 95 Ill. App. 2d 104, 115, 237 N.E.2d 822, 827, in rejecting an argument similar to that raised by plaintiff here, stated:

> "We do not agree with plaintiff that 'a proceeding to revoke a license to practice a trade or profession causing the deprivation of an opportunity to earn a livelihood through such trade or profession is a criminal case.'"

Thus, revocation of a professional license is not a criminal sanction and the eighth

amendment has no application here.

[Pg. 591]

Plaintiff suggests also that his license was revoked "arbitrarily and unreasonably or in clear violation of an established rule of law." In support, he makes only a general statement in his brief that of 11 revocation hearings of the Department based upon the grounds of "unworthiness and incompetence" and "disregarding or violating the Act or Rules," only the instant one did not arise out of a real estate transaction.

Initially, we note that we are unable to determine the significance, if any, of this argument since there is nothing in the record concerning the 11 hearings and plaintiff's brief contains no information in that regard other than the above general statement. Further-

more, we note that section 15(e) of the Act applies not only to a registrant acting as a real estate broker or salesman but also where a registrant, in handling his own property, is found guilty of unworthiness and incompetence (sec. 15(e)(11)) or disregards or violates any provision of the Act (sec. 15(e)(21)). Here, plaintiff was such a registrant, handling his own property and, in any event, we view the rental of residential units to be real estate transactions.

We see no merit in an additional contention of plaintiff that the Department lacked the authority to revoke his license because, effective October 1, 1977, section 15 of the Act (Ill. Rev. Stat. 1977, ch. 111, par. 5732) was amended to include "censure or reprimand" as sanctions, where

prior thereto the Department could only refuse to issue or renew, suspend or revoke a certificate or registration.

8. Pointing out that the amendment was after the June hearing in question but prior to the entry of the Department's order of revocation in late October 1976, plaintiff argues that the Department lost the authority to revoke his license. He argues that under the rules of statutory construction, there is a presumption "that an amendment to a law changes that law." While it is true that in amending a statute the General Assembly intended to make some change in the existing law (see Goedde v. Community Unit School District No. 7 (1959), 21 Ill. App. 2d 79, 157 N.E.2d 266), an amendatory act is to be construed as continuing in effect the unchanged portions of the

original act (Gaither v. Lager (1954), 2 Ill. 2d 293, 118 N.E.2d 4). Here, the legislature's addition of two actions the Department could take in a disciplinary proceeding does not alter its power to revoke a registrant's license, since the specific language granting such authority was not altered by the amendment.

Plaintiff takes the additional position that the Department's order was erroneous because of the Committee's failure to procure a transcript of the hearing prior to making its recommendation of revocation. Plaintiff took this same position in support of his contention that the Committee was biased, and we found above that there was no requirement that such a transcript be obtained. Adhering to that conclusion, we find no error

resulted from the fact that a transcript was not obtained before the Committee made its recommendation.

In view of the foregoing, we affirm the Department's decision and the order of the trial court.

Affirmed.

MEJDA and WILSON, JJ., concur.

APPENDIX B

PRIOR OPINION OF APPELLATE COURT 77-1932

REPORTED AS 62 Ill. App. 3d 633 (1978)

BENJAMIN A. RASKY,	)APPEAL FROM THE
	)CIRCUIT COURT
Plaintiff-Appellant,	)OF COOK COUNTY
	)
v.	)HONORABLE
	)ARTHUR L. DUNNE
JOAN G. ANDERSON, as Director of the Department of Registration and Education, and the DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS,	) PRESIDING
Defendants-Appellees.	)

MR. JUSTICE MEJDA delivered the opinion of the court:

Plaintiff, Benjamin A. Rasky, filed suit against defendants, the Department of Registration and Education (Department) and its director, Joan Anderson, seeking a declaratory judgment and injunctive relief.

The trial court granted defendants' motion to dismiss plaintiff's suit "because the Court finds that the present action is premature and that plaintiff has failed to exhaust his administrative remedies." Plaintiff on appeal argues that the trial court erred, since the law is that one may attack the constitutionality of a statute on its face without prior resort to related administrative remedies. See People ex rel. Kreda v. Fitzgerald (1975), 33 Ill. App.3d 209, 338 N.E. 2d 76; Hill v. Daley (1975), 28 Ill. App. 3d 202, 328 N.E.2d 142.

We dismiss the appeal. The pertinent facts follow.

On or about January 25, 1977, plaintiff received notice and a complaint stating that the Department would seek the suspension or revocation of his real estate

broker's license. The complaint charged that plaintiff owned and operated several buildings which violated the Municipal Code of Chicago, and that in allowing certain conditions (i.e., roach infestation, debris and dirt in the hallways, lack of hot water) to persist plaintiff had violated sections 15(e)11 and 21 of the Real Estate Brokers and Salesmen License Act (Ill. Rev. Stat. 1975, ch. 114-1/2, pars. 115(e)(11), 115(e)(21),[1] as well as rule XI of the rules promulgated by the Department

[Pg. 635]

pursuant to said Act.

A hearing was set for February 22, 19771 however, the matter was con-

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[1]This act has been transferred to chapter 111 of the Illlinois Revised Statutes, Professions and Occupations, and these sections are presently codified as Ill. Rev. Stat. 1977. ch. 111, pars. 5732(e)11 and 21.

tinued until June 14, 1977.

On June 14, 1977, plaintiff filed the instant action in the circuit court seeking a declaratory judgement that certain pertinent provisions of the Act,[2] as well as the Department's rule XI, were unconstitutional and requesting that the court stay any proceedings by the Department to revoke or suspend his broker's license. Meanwhile, at the Department's offices the hearing was held ex parte before the Real Estate Examining Committee (Committee), plaintiff having failed to appear until some 15 minutes after the conclusion of the hearing despite proper notice to him of both its time and place.

On July 15, 1977, the trial court dis-

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[2] In addition to sections 15(e)11 and 21, plaintiff also challenged the constitutionality of section 4.02(a) of the Real Estate Brokers and Salesmen License Act (Ill. Rev. Stat. 1977, ch. 111, par. 5706(a)), which defines the term "Broker."

missed plaintiff's action as noted earlier, without reaching the merits of his complaint. On July 20, 1977, the Committee made its findings of fact and conclusions of law based on the June 14 hearing, and recommended to the director of the Department that plaintiff's broker's license be revoked. On August 2, 1977, plaintiff was notified of this recommendation and informed that he had 20 days therefrom to petition the director for a rehearing. His petition was denied, and in fact his broker's license was revoked by the Department on October 21, 1977.

Plaintiff did petition the court to reconsider its dismissal order of July 15. The court denied the motion and this appeal follows.

OPINION

As a threshold issue we first must consider whether the subsequent revocation

of plaintiff's broker's license has rendered this case moot. We conclude that it has.

1 The proposition is established that a court of review will not ordinarily dispose of an appeal on its merits where the court has notice of facts that demonstrate that no actual rights or interests of the parties will be affected thereby. (Wheeler v. Aetna Casualty & Surety Co. (1974), 57 Ill. 2d 184, 311 N.E.2d 134.) It is the duty of this court to decide actual controversies which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. (In re Mullins (1975), 35 Ill. App. 3d 47, 341 N.E.2d 140.) An abstract question is one in existence, but for which no effectual relief can be granted. Harney v. Cahill (1965), 57 Ill. App. 2d 1, 206 N.E.2d 500.

2 In the instant case it is no longer within the power of this court to render any effective relief to [Pg. 636] plaintiff. His broker's license has already been revoked, and while plaintiff could have contested and appealed that decision pursuant to the Administrative Review Act (Ill. Rev. Stat. 1977, ch. 110, pars. 264 through 279), he failed to do so. The revocation has become a final, nonappealable order, not subject to attack through the instant proceedings. Therefore, our pro- [Page 636, ln. 6] nouncements upon the issues raised by plaintiff in this appeal, even if favorable to him, would have no effect in restoring his license. A reversal could not act to prohibit an action which already has occurred and cannot be recalled with any practical

effect. (See In re Mullins.) Plaintiff should have pursued his administrative remedies, and perhaps have consolidated his causes on appeal to this court.

Thus, we conclude that the instant appeal is moot in light of our inability to render any effective relief to plaintiff. Courts are not required to review questions of a refusal to grant declaratory or injunctive relief where the relief sought involves a matter that has become moot. (Knight v. Board of Education (1976), 38 Ill. App. 3d 603, 348 N.E.2d 299.) Accordingly, this appeal is dismissed.

Appeal dismissed.

LORENZ and WILSON, JJ., concur.

SUPPLIMENTAL OPINION ON DENIAL OF REHEARING

Mr. JUSTICE MEJDA delivered the opinion of the court:

Plaintiff has petitioned for a rehearing of this court's determination that his appeal should be dismissed. Of those points raised in his petition, we consider that only one bears any relevance to our prior decision and thus deserves some comment.

In our decision we recited the fact that the revocation of plaintiff's license had rendered this case moot. Plaintiff still concedes that his license has in fact been revoked. We also noted that said revocation had become final, since plaintiff had failed to pursue his administrative remedies, and thus was not subject to a collateral attack through the instant appeal. The record before us contained no indication that an administrative appeal had been taken, and the court was informed at oral argument by the Assistant Attorney General, without objection or exception by plaintiff,

that no such action had been taken. Plaintiff now points out that the court was misinformed on this point. In fact, he has filed a complaint for administrative review, which is presently pending in the circuit court. This fact, however, does not alter our determination.

In our view, the revocation of plaintiff's license still renders the instant appeal moot. Clearly the question of injunctive relief has been mooted

[Pg. 637]

by the license revocation. Similarly, we conclude that any action by this court concerning the requested declaratory relief would still not have the effect of restoring plaintiff's license. If such is to occur, it will be through the pending action in administrative review.

Furthermore, we note that the is-

sue on appeal concerning the dismissal of plaintiff's declaratory judgement action is not whether the trial court should have declared the rights of the parties, but rather whether the court's failure to do so was an abuse of discretion. (Farmer's Oil & Supply Co. v. Illinois Central R.R. Co. (1972), 6 Ill. App. 3d 965, 286 N.E. 2d 68; Interlake Iron Corp. v. Dravo Corp. (1966), 68 Ill. App. 2d 167, 215 N.E.2d 137.)

[Pg. 637, ln. 7]

However, since plaintiff now has the opportunity through administrative review to raise those same issues raised in his previous action, any such determination by this tribunal would be unnecessary, as well as unavailing. Plaintiff is assured of receiving a hearing on the merits of his contentions and has thus basically secured what he originally sought. Cf. Thurman v. Department of

Public Aid (1974), 25 Ill. App. 3d 367, 323 N.E.2d 502.

3 Lastly, we are unconvinced that the presence of alleged constitutional challenges to the statute's validity in this case requires our ruling on the merits of this appeal. These issues too may be litigated in the administrative review process. Thus, while this court has the power to enter declaratory relief (Ill. Rev. Stat. 1977, ch. 110A, par. 366(a)(5)), we would abstain from doing so in a case such as this. The general rule is that a declaratory judgement will not issue where another appropriate proceeding involving the same subject matter and issues is already pending. See Coles-Moultrie Electric Cooperative v. City of Charleston (1972), 8 Ill. App. 3d 441, 289 N.E.2d 491; 16 Ill. L. & Prac. Declaratory Judgements §7 (1971).

For the foregoing reasons, we ad-

here to our prior disposition of this case. The petition for rehearing is denied.

LORENZ and WILSON, JJ., concur.

APPENDIX C

IN THE APPELLATE COURT, STATE OF ILLINOIS

FIRST DISTRICT

BENJAMIN A. RASKY, Plaintiff-Appellant, v. DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS and JOAN G. ANDERSON, Director	NO. 79-334

ORDER

The pro se plaintiff-appellant's petition for rehearing is denied.

DATED: November 20, 1980

JOHN J. SULLIVAN, Presiding Justice

Justice JAMES J. MEJDA

Justice KENNETH E. WILSON

APPENDIX D

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217)782-2035

March 30, 1981

Mr. Benjamin A. Rasky
Attorney at Law
5104 W. Weber Lane
Skokie, IL 60077

No. 54333 - Benjamin A. Rasky, petitioner, vs. Department of Registration and Education et al., etc., respondents. Leave to appeal, Appellate Court, First District

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

(Signed) Clell L. Woods

Clerk of the Supreme Court

APPENDIX E

NO. 79-334

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT, FIFTH DIVISION
(Reported as 87 Ill App 3d 633)

BENJAMIN A. RASKY,	)	Appeal from
	)	Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
-vs-	)	No. 77L22903
	)	
DEPARTMENT OF REGISTRATION	)	JUDGE ARTHUR L.
AND EDUCATION OF THE STATE	)	DUNNE,
OF ILLINOIS and JOAN G.	)	Presiding.
ANDERSON, Director,	)	
	)	
Defendants-Appellees.	)	

NOTICE OF APPEAL TO THE

SUPREME COURT OF THE UNITED STATES

TO: TYRONE C. FAHNER, Attorney General
of Illinois
Attorney for Defendants-Appellees
160 North LaSalle Street
Chicago, Illinois 60602

Notice is hereby given that BENJAMIN A. RASKY, Plaintiff-Appellant, hereby appeals to the Supreme Court of the United States from the Judgment of the Appellate Court of Illinois of June 27, 1980, which

-affirmed the decision of the trial judge,- ARTHUR L. DUNNE, who on August 9, 1978, affirmed the decision of the Director of the Department of Registration and Education that revoked Plaintiff's Real Estate Broker's License on October 21, 1977 Ex Parte, and on November 30, 1978 denied Plaintiff's Motion to Vacate said Order. This Court entered an Order denying Plaintiff's Petition for Rehearing on November 20, 1980. The Illinois Supreme Court denied Leave to Appeal on March 30, 1981, and this Notice is filed within 90 days of the latter date.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

BENJAMIN A. RASKY, Pro Se
Plaintiff-Appellant
Attorney at Law
5104 West Weber Lane
Skokie, Illinois 60077
(312) 679-8992

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

PROOF OF SERVICE OF NOTICE OF APPEAL

BENJAMIN A. RASKY being first duly sworn on oath deposes and says that he served a true and correct copy of the foregoing Notice of Appeal upon TYRONE C. FAHNER, Attorney General of Illinois and attorney for Defendants-Appellees, on May 27, 1981, by delivering it personally to the said party at 160 N. LaSalle St., Chicago.

Benjamin A. Rasky

SUBSCRIBED AND SWORN TO BEFORE me this 27th day of May, 1981.

Notary Public

Received a copy of the foregoing Notice of Appeal this 27th day of May, 1981.

TYRONE C. FAHNER, Attorney General of Ill. & atty. for Appellees

E-3

APPENDIX F

DEPARTMENT OF REGISTRATION)
AND EDUCATION of the)
State of Illinois, Complainant)
vs.) No. 76-255
BENJAMIN A. RASKY)
#075-039524 Respondent)

C O M P L A I N T

Now comes the DEPARTMENT OF REGISTRATION AND EDUCATION of the State of Illinois, by its Chief Regulatory Officer, Algis Augustine, and as its COMPLAINT against Benjamin A. Rasky Respondent, complains as follows:

1. Benjamin A. Rasky, hereinafter "Respondent" is presently the holder of a Certificate of Registration as a Real Estate Broker in the State of Illinois, No. 075-039524, issued by the Department of Registration and Education of the State of Illinois, hereinafter "Department".

2. On and before June 15, 1973, the Respondent owned, managed, operated and controlled a certain building having a common address of 5621-25 N. Winthrop, Chicago, Illinois wherein existed numerous violations of the Municipal Code of Chicago and other conditions including but not limited to roach infestation, debris and dirt in the hallways, lack of hot water, rotten and decaying wood and plaster loose and peeling and upon the floors of the said building, and which conditions endangered the health and safety of any inhabitant of said building and which conditions continue to this date in whole or in part.

3. On and before August 17, 1973, Respondent owned, managed, operated and controlled a certain building having a common address of 832 W. Gunnison, Chicago, Illinois wherein existed numerous violations of the Municipal Code of Chicago and other conditions including but not limited to faulty electrical wiring and plumbing and loose and falling plaster and which conditions endangered the health and safety of any inhabitant of said building and which conditions continue to this date in whole or in part.

4. On and before April 29, 1974, Respondent owned, managed, operated and controlled a certain building having a

common address of 5726-28 N. Winthrop, Chicago, Illinois wherein existed numerous violations of the municipal Code of Chicago and other conditions including but not limited to defective elevators, filthy and poorly lit hallways, roach infestation, frequent lack of heat and hot water, accumulation of garbage and debris, peeling, chipping plaster and paint and which conditions endangered the health and safety of any inhabitant of said building and which conditions continued for some time thereafter.

5. On and before November 15, 1974, Respondent owned, managed, operated and controlled a certain building having a common address of 1064-68 W. Berwyn,

also known as 5301-09 N. Winthrop, Chicago, Illinois wherein existed numerous violations of the Municipal Code of Chicago and other conditions including but not limited to falling and peeling plaster and bad plumbing and mice and roach infestation and defective exterior walls and which conditions endangered the health and safety of any inhabitant of said building and which conditions continued for some time thereafter.

6. The foregoing acts of commission and/or omission are grounds for revocation or suspension of a Certificate of Registration pursuant to Chapter 114½, Section 115(e)(11) and (21), Illinois Revised Statutes

and Rule XI of the Rules promulgated by the Department of Registration and Education pursuant to the Real Estate Brokers and Salesmen License Act.

WHEREFORE, based on the foregoing allegations, the DEPARTMENT OF REGISTRATION AND EDUCATION of the State of Illinois, by Algis Augustine its Chief Regulatory Officer, charges that the Real Estate Brokers license of Benjamin A. Rasky be suspended or revoked pursuant to the following provision(s) of law:

Illinois Revised Statutes, Chapter 114½, Section(s) 115 (e) (11) and (21) and Rule XI of the Rules promulgated by the Department of Registration and Education pursuant to the Real Estate Brokers and Salesmen License Act.

DEPARTMENT OF REGISTRATION AND EDUCATION of the State of Illinois

(Sig.) BY: Algis Augustine

ALGIS AUGUSTINE
CHIEF REGULATORY OFFICER

APPENDIX I

APPLICABLE STATUTES, DEPARTMENT RULE AND CONSTITUTIONAL PROVISIONS

Section 115(e) (11) and (21) of Illinois Revised Statutes, Chapter 114½, Real Estate Brokers and Salesmen (now Sec. 5732 of Chap. 111, Professions and Occupations, effective December 15, 1974), provides as follows:

> Sec. 115. Refusal to issue or renew certificate -- Suspension or revocation of certificate -- Causes). The Department may refuse to issue or renew, may suspend or may revoke any certificate of registration for any one or any combination of the following causes:
>
> (e) Where the registrant in performing or attempting to perform or pretending to perform any act as a real estate broker or salesman, or where such registrant, in handling his own property, whether held by deed, option, or otherwise, is found guilty of:
>
> (11). Having demonstrated unworthiness or incompetency to act as a real estate broker or salesman in such manner as to safeguard the interest of the public:
>
> (21). Disregarding or violating any provision of this Act, or the published

rules or regulations promulgated by the Department to enforce this Act; or

Rule XI of the Rules promulgated by the Department of Registration and Education pursuant to the Real Estate Brokers and Salesmen License Act which went into effect December 15, 1974 provides as follows:

> XI: PROPERTY MANAGEMENT. Unworthiness or incompetence on the part of a registrant as set forth in Section 115(e) (1) of the Act may consist of both acts and omissions to act. Omissions to act and a failure to safeguard the interests of the public in the buying or selling, the negotiation of sales or exchange of real estate, the leasing or renting of real estate wherein the premises are known by the registrant to be in violation of ordinances made for the protection of the public in regard to fire, health, sanitation and other hazards shall be deemed "unworthiness or incomptence."

Section 104.02, Broker (now Sec. 5706(a) of Chap. 111), effective October 1, 1975, of the Illinois Revised Statutes provides:

> Section 104.02(a). "Broker" means any person, association, copartnership or

corporation, who for compensation or valuable consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who leases, or offers to lease, or rents or offers for rent, any real estate, or negotiates leases thereof, or of the improvements thereon for another or others or who performs any of the foregoing acts for his own account while engaged in the business of buying or selling real estate.

Section 108. Rules and regulations--Examination Committee--Commissioner of Real Estate--Powers and functions)

(a) The Department may make and enforce reasonable rules and regulations for conducting examinations and in connection with the issuance, renewal, revocation, suspension or recall of any certificate as are necessary to administer and enforce this Act.

(b) None of the functions, powers or duties enumerated in Sections 9, 10(a), 11, 14(b) and 16(a) shall be exercised by the Department except upon the action and report in writing of the Examining Committee, designated by the Director of the Department.

(c) There shall be in the Department a Commissioner of Real Estate who shall be the supervisor of the real estate department and who shall have the

following powers and functions:

3. He shall prepare and circulate to registrants such educational and informational material as he deems necessary for guidance or assistance to registrants.

U. S. CONSTITUTIONAL PROVISIONS:

AMENDMENT (VIII.)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.